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AN ACT

RELATING TO REAL ESTATE; EXPANDING INVESTMENT POSSIBILITIES FOR A CERTAIN CAPITAL FUND IN THE LAND TITLE TRUST FUND; PROVIDING CERTAIN POWERS TO THE NEW MEXICO MORTGAGE FINANCE AUTHORITY; PROVIDING FOR A SCHOLARSHIP PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-18-5 NMSA 1978 (being Laws 1975, Chapter 303, Section 5, as amended) is amended to read:

"58-18-5. POWERS OF THE AUTHORITY.--The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the Mortgage Finance Authority Act, including but without limiting the generality of the foregoing, the power:

- A. to sue and be sued;
- B. to have a seal and alter it at pleasure;
- C. to make and alter bylaws for its organization and internal management;
- D. to appoint other officers, agents and employees, prescribe their duties and qualifications and fix their compensation;
- E. to acquire, hold, improve, mortgage, lease and dispose of real and personal property for its public purposes;
- F. subject to the provisions of Section 58-18-6 NMSA 1978, to make loans, and contract to make loans, to mortgage lenders;
- G. subject to the provisions of Section 58-18-7 NMSA 1978, to purchase, and contract to purchase, mortgage loans from mortgage lenders;
- H. to procure or require the procurement of a policy of group or individual life insurance or disability insurance or both to insure repayment of mortgage loans in event of the death or disability of the borrower and to pay any premiums for the policy;

1 I. to procure insurance against any loss in connection with its
2 operations, including without limitation the repayment of any mortgage loan, in
3 amounts and from insurers, including the federal government, that the authority deems
4 necessary or desirable; to procure liability insurance covering its members, officers
5 and employees for acts performed within the scope of their authority as members,
6 officers or employees; and to pay any premiums for insurance procured;

7 J. subject to any agreement with bondholders or noteholders:

8 (1) to renegotiate any mortgage loan or any loan to a
9 mortgage lender in default;

10 (2) to waive any default or consent to the modification of the
11 terms of any mortgage loan or any loan to a mortgage lender and otherwise exercise
12 all powers with respect to its mortgage loans and loans to mortgage lenders that any
13 private creditor may exercise under applicable law; and

14 (3) to commence, prosecute and enforce a judgment in any
15 action or proceeding, including without limitation a foreclosure proceeding, to protect
16 or enforce any right conferred upon it by law, mortgage loan agreement, contract or
17 other agreement; and in connection with any such proceeding, to bid for and purchase
18 the property or acquire or take possession of it and, in such event, complete,
19 administer, pay the principal of and interest on any obligations incurred in connection
20 with the property and operate or dispose of and otherwise deal with the property in
21 such manner as the authority may deem advisable to protect its interests therein;

22 K. to make and execute contracts for the administration, servicing or
23 collection of any mortgage loan and pay the reasonable value of services rendered to
24 the authority pursuant to such contracts;

25 L. to fix, revise from time to time, charge and collect fees and other
charges in connection with the making of mortgage loans, the purchasing of mortgage
loans and any other services rendered by the authority;

M. subject to any agreement with bondholders or noteholders, to sell
any mortgage loans at public or private sale at such prices and on such terms as the

1 authority shall determine;

2 N. to borrow money and to issue bonds and notes that may be
3 negotiable and to provide for the rights of the holders thereof;

4 O. to arrange for guarantees or other security, liquidity or credit
5 enhancements in connection with its bonds, notes or other obligations by the federal
6 government or by any private insurer or other provider and to pay any premiums
7 therefor;

8 P. subject to any agreement with bondholders or noteholders, to invest
9 money of the authority not required for immediate use, including proceeds from the
10 sale of any bonds or notes:

11 (1) in obligations of any municipality or the state or the United
12 States of America;

13 (2) in obligations the principal and interest of which are
14 guaranteed by the state or the United States of America;

15 (3) in obligations of any corporation wholly owned by the
16 United States of America;

17 (4) in obligations of any corporation sponsored by the United
18 States of America that are or may become eligible as collateral for advances to
19 member banks as determined by the board of governors of the federal reserve
20 system;

21 (5) in certificates of deposit or time deposits in banks qualified
22 to do business in New Mexico, secured in the manner, if any, as the authority shall
23 determine;

24 (6) in contracts for the purchase and sale of obligations of the
25 types specified in this subsection; or

(7) as otherwise provided in any trust indenture or a resolution
authorizing the issuance of the bonds or notes;

Q. subject to any agreement with bondholders or noteholders, to
purchase bonds or notes of the authority at the price as may be determined by the

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1 authority or to authorize third persons to purchase bonds or notes of the authority;
2 bonds or notes so purchased shall be canceled or resold, as determined by the
3 authority;

4 R. to make surveys and to monitor on a continuing basis the adequacy
5 of the supply of:

6 (1) funds available in the private banking system in the state
7 for affordable residential mortgages; and

8 (2) adequate, safe and sanitary housing available to persons
9 of low or moderate income in the state and various sections of the state;

10 S. to make and execute agreements, contracts and other instruments
11 necessary or convenient in the exercise of the powers and functions of the authority
12 under the Mortgage Finance Authority Act;

13 T. to employ architects, engineers, attorneys (other than and in
14 addition to the attorney general of the state), accountants, housing, construction and
15 financial experts and such other advisors, consultants and agents as may be
16 necessary in its judgment and to fix and pay their compensation;

17 U. to contract for and to accept any gifts or grants or loans of funds or
18 property or financial or other aid in any form from the federal government or from any
19 other source and to comply, subject to the provisions of the Mortgage Finance
20 Authority Act, with the terms and conditions thereof;

21 V. to maintain an office at such place in the state as it may determine;

22 W. subject to any agreement with bondholders and noteholders, to
23 make, alter or repeal, subject to prior approval by the Mortgage Finance Authority Act
24 oversight committee, hereby created, to be composed of four members appointed by
25 the president pro tempore of the senate and four members appointed by the speaker
of the house of representatives, such rules and regulations with respect to its
operations, properties and facilities as are necessary to carry out its functions and
duties in the administration of the Mortgage Finance Authority Act;

X. to make, purchase, guarantee, service and administer mortgage

1 loans for residential housing for the purposes set forth in the Mortgage Finance
2 Authority Act where private banking channels and private enterprise, unaided, have
3 not, cannot or are unwilling to make, purchase, guarantee, service or administer the
4 loans;

5 Y. to act as trustee and administer the land title trust fund created
6 pursuant to Section 58-28-3 NMSA 1978;

7 Z. to act as trustee and administrator pursuant to the Low-Income
8 Housing Trust Act; and

9 AA. to do any and all things necessary or convenient to carry out its
10 purposes and exercise the powers given and granted in the Mortgage Finance
11 Authority Act."

12 Section 2. Section 58-18B-3 NMSA 1978 (being Laws 1994, Chapter 146,
13 Section 3, as amended) is amended to read:

14 "58-18B-3. DEFINITIONS.--As used in the Low-Income Housing Trust Act:

15 A. "appropriate financial institution service charges and fees" means
16 those service charges and fees that a financial institution charges its customers on
17 demand deposit accounts;

18 B. "division" means the financial institutions division of the regulation
19 and licensing department;

20 C. "escrow closing agent" means an escrow agent other than a title
21 company that acts in the normal course of business as the agent of the seller and
22 buyer of real estate for the purpose of consummating a sale, including the
23 performance of the following functions:

24 (1) preparation of deeds, mortgages, promissory notes, deeds
25 of trust, real estate contracts, assignments or other documents incidental to the sale
as permitted by law;

(2) calculations and disbursements of prorated taxes,
insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

- 1 (4) supervision of signing of documents;
- 2 (5) collection and disbursement of down payments, realtors'
- 3 commissions, fees and other charges pursuant to a sales agreement; and
- 4 (6) recordation of documents;
- 5 D. "escrow servicing agent" means a person who in the normal course
- 6 of business collects and disburses funds received from real estate-related financing
- 7 instruments on behalf of a lender or borrower;
- 8 E. "first-time home buyer" means:
- 9 (1) an individual or the individual's spouse who has not owned
- 10 a home other than a manufactured home during the three-year period prior to the
- 11 purchase of a home; or
- 12 (2) an individual who is a displaced homemaker or a single
- 13 parent;
- 14 F. "fund" means the land title trust fund created pursuant to the
- 15 provisions of the Land Title Trust Fund Act;
- 16 G. "low-income persons" means a household consisting of a single
- 17 individual or a family or unrelated individuals living together when the household's total
- 18 annual income does not exceed eighty percent of the median income for the area, as
- 19 determined by the United States department of housing and urban development and
- 20 as adjusted for family size, or other income ceiling determined for the area on the
- 21 basis of that department's findings that such variations are necessary because of
- 22 prevailing levels of construction costs or fair market rents or unusually high or low
- 23 family incomes;
- 24 H. "person" means an individual or any other legal entity;
- 25 I. "property manager" means a person who acts in the normal course
- of business as the agent for the owner of real property for the purpose of property
- rental, leasing and management; and
- J. "trustee" means the New Mexico mortgage finance authority."

1 Section 10, as amended) is amended to read:

2 "58-18B-5. TRUST ACCOUNTS--ESCROW ACCOUNTS--SPECIAL
3 ACCOUNTS--POOLED INTEREST-BEARING ACCOUNTS--DISPOSITION OF EARNED
4 INTEREST ON CERTAIN ACCOUNTS.--

5 A. Every real estate broker who maintains a trust or escrow account as
6 required pursuant to the provisions of Paragraph (8) of Subsection A of Section 61-
7 29-12 NMSA 1978 may maintain a pooled interest-bearing escrow account and may
8 deposit all customer funds into that account except for:

- 9 (1) funds required to be deposited into a property
10 management trust account under an express property management agreement; or
11 (2) funds required to be deposited into an interest-bearing
12 account under an express agreement between the parties to a transaction and under
13 which agreement provisions are made for the payment of interest to be earned on the
14 funds deposited.

15 B. Every escrow closing agent that maintains a trust account or escrow
16 account pursuant to the provisions of Section 58-22-20 NMSA 1978 shall maintain a
17 pooled interest-bearing escrow account and shall deposit all customer funds into that
18 account, except for funds required to be deposited into an interest-bearing account
19 under an express agreement between the parties to a transaction and under which
20 agreement provisions are made for the payment of interest to be earned on the funds
21 deposited.

22 C. The interest earned on customer funds deposited in a pooled
23 interest-bearing escrow account pursuant to the provisions of Subsection A or B of this
24 section, net of any appropriate financial institution service charges and fees, shall be
25 remitted monthly or quarterly from the financial institution in which the account is
maintained to the fund. The account agreement between the depositor and the
financial institution shall expressly provide for the required remittance of interest.

D. The provisions of this section do not relieve a real estate broker or
escrow closing agent from any obligations under other laws to safeguard and account

1 for funds in a pooled interest-bearing account.

2 E. The pooled interest-bearing escrow accounts authorized to be
3 established pursuant to the provisions of this section shall be interest-bearing demand
4 accounts from which withdrawals and transfers can be made without delay, subject
5 only to any notice period the depository institution is required to observe by law or
6 rule.

7 F. The trustee shall adopt rules to carry out the provisions of the Low-
8 Income Housing Trust Act.

9 G. A person establishing and maintaining a pooled interest-bearing
10 escrow account required by the provisions of Subsection A or B of this section is not
11 required to make disclosure to a person whose funds are placed in the account of the
12 disposition of interest earned on the account.

13 H. An escrow servicing agent shall not be required to establish and
14 maintain a pooled interest-bearing escrow account pursuant to the provisions of
15 Subsection A or B of this section.

16 I. A property manager shall not be required to establish and maintain a
17 pooled interest-bearing escrow account pursuant to the provisions of Subsection A or
18 B of this section.

19 J. Real estate brokers and escrow closing agents shall enroll and
20 instruct participating financial institutions on how to establish a pooled interest-bearing
21 escrow account and how to authorize remittance of accrued interest less service
22 charges to the fund.

23 K. A real estate broker or an escrow closing agent shall not be
24 required to establish and maintain a pooled interest-bearing escrow account pursuant
25 to the provisions of Subsection A or B of this section if no financial institution in the
community where the broker or agent maintains his principal place of business
provides or offers that type of account."

Section 4. Section 58-28-4 NMSA 1978 (being Laws 1997, Chapter 118,
Section 4, as amended) is amended to read:

1 "58-28-4. TRUST ACCOUNTS--ESCROW ACCOUNTS--POOLED INTEREST-
2 BEARING TRANSACTION ACCOUNTS--DISPOSITION OF EARNED INTEREST ON
3 CERTAIN ACCOUNTS.--

4 A. A title company that maintains one or more trust accounts or escrow
5 accounts into which customer funds are deposited for use in the purchase, sale or
6 financing of real property located in New Mexico may maintain one or more pooled
7 interest-bearing transaction accounts and may deposit customer funds into those
8 accounts, except for funds required to be deposited into interest-bearing accounts or
9 investments under instructions from one or more of the parties to a transaction that
10 provide for the payment of interest to be earned on the deposited funds to a person
11 other than the title company. A pooled interest-bearing transaction account
12 established pursuant to the provisions of this section shall be maintained in the name
13 of the title company, but the trustee shall be named and shown as the beneficial owner
14 of the account income or interest. A title company maintaining one or more pooled
15 interest-bearing transaction accounts shall not be paid or receive any interest earned
16 on funds deposited in the accounts except for the purpose of remitting net earned
17 interest to the trustee pursuant to the provisions of this section.

18 B. The interest earned on customer funds deposited in a pooled
19 interest-bearing transaction account pursuant to the requirements of Subsection A of
20 this section, net of any service charges and fees that a depository institution charges
21 to regular, non-title company depositors and net of any reasonable charge for
22 preparation and transmittal of any required report pursuant to the provisions of
23 Subsection F of this section, shall be remitted monthly or quarterly either directly to the
24 fund or to the title company for its remittance to the fund. Alternatively, the depository
25 institution may credit the title company account with the net interest earned either
monthly or quarterly. Interest accrued after deducting the allowable charges and fees
shall be treated as interest earned by the trustee and reported as such by the
depository institution.

C. The provisions of this section shall not change existing duties or

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1 obligations of a title company under other laws to safeguard and account for funds
2 held for customers.

3 D. Funds in each pooled interest-bearing transaction account shall be
4 subject to withdrawal upon request and without delay, subject only to the notice period
5 the depository institution is required to observe by law or rule.

6 E. The rate of interest payable on a pooled interest-bearing
7 transaction account shall not be less than the rate customarily paid by the depository
8 institution to regular, non-title company depositors for similar accounts. Interest shall
9 be computed in accordance with the depository institution's standard accounting
10 practice. Higher rates offered by the depository institution to customers whose
11 deposits exceed certain time or quantity minima, such as those offered in the form of
12 certificates of deposit, may be obtained by the title company on some or all of the
13 deposited funds so long as there is no impairment of the right to withdraw or transfer
14 principal, subject only to the notice period the depository institution is required to
15 observe by law or rule.

16 F. A depository institution or title company making a remittance of
17 interest to the fund shall at the time of the remittance transmit a report to the trustee
18 for each account from which remittance is made showing:

19 (1) the name of the title company maintaining the account from
20 which remittance is made;

21 (2) the rate of interest used to compute the earned interest
22 and the amount of earned interest;

23 (3) the amount, if any, of depository institution service charges
24 and fees deducted and any charge for the preparation and transmittal of the report;
25 and

(4) the account balance as of the ending date of the reporting
period.

G. If the depository institution remits to the title company or credits the
title company account, it shall make the remittance or credit no later than ten days

1 after the statement cutoff for that account. The title company shall remit to the fund
2 and shall send the report with the remittance no later than thirty days after receipt of
3 the remittance or credit by the depository institution.

4 H. Remittances to the fund shall be made at least quarterly, no later
5 than ten days after the statement cutoff for that account if made by the depository
6 institution and no later than thirty days after receipt of remittance or credit from the
7 depository institution if made by the title company.

8 I. The trustee shall adopt and promulgate rules regarding the
9 obligations of depository institutions pursuant to the provisions of the Land Title Trust
Fund Act and the Low-Income Housing Trust Act."

10 Section 5. Section 58-28-5 NMSA 1978 (being Laws 1997, Chapter 118,
11 Section 5) is amended to read:

"58-28-5. USE OF MONEY--ELIGIBLE ACTIVITIES.--

12 A. Money from the fund and other sources may be used to finance in
13 whole or in part any loans or grant projects that will provide housing for low-income
14 persons and for other uses specified in this section. Money deposited into the fund
15 may be used annually as follows:

16 (1) no more than five percent of the fund shall be used for
17 expenses of administering the fund;

18 (2) no less than twenty percent of the fund shall be invested in
19 a permanent capital fund, the interest on which may be used for purposes specified in
this section;

20 (3) no less than fifty percent of the fund shall be allocated to
21 eligible organizations to make housing more accessible to low-income persons;

22 (4) no more than ten percent of the fund may be allotted for
23 use to provide scholarships for New Mexico high school graduates and general
24 equivalency diploma recipients at New Mexico public post-secondary educational
25 institutions under a program approved by the trustee under the administration of a
nonprofit statewide land title association; and

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1 (5) the remaining balance may be allocated to eligible
2 organizations for other housing-related programs for the benefit of the public as
3 specifically approved by the trustee from time to time.

4 B. Money in the capital fund authorized in Paragraph (2) of Subsection
5 A of this section may be invested in fully amortizing interest-bearing mortgages
6 secured by real property in New Mexico, the interest on which may be used for
7 purposes specified in this section."

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